

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

OCTAVIO HERNANDEZ SUAREZ,

Defendant.

CIV. NO. S-06-2728 EJG

CR. NO. S-02-0246 EJG

ORDER DENYING REQUEST FOR
CERTIFICATE OF APPEALABILITY

Defendant has filed a Notice of Appeal from the court's June 24, 2010 order denying his Rule 60(b) motion, and the July 26, 2010 order denying his motion for reconsideration of the same. He has also filed a request for a certificate of appealability. It is unclear whether such a certificate is necessary since the appeal is not sought from a final order denying a § 2255 petition.¹ However, the request will be addressed to obviate the

¹Both the appellate rule and the statute speak in terms of final orders in § 2255 proceedings. See 28 U.S.C. § 2253 (c)(1)(B) and Fed. R. Appellate Procedure 22(b).

1 need for a remand from the appellate court in the event a
2 certificate is required.

3 A certificate of appealability may issue "only if
4 [defendant] has made a substantial showing of the denial of a
5 constitutional right." 28 U.S.C. § 2253(c)(2). The court must
6 either issue a certificate of appealability indicating which
7 issues satisfy the required showing or must state the reasons why
8 such a certificate should not issue. Fed. R. App. P. 22(b)(1).
9 For all the reasons stated in the court's June 24, 2010 order
10 denying the Rule 60(b) motion for relief from judgment, defendant
11 has not made a substantial showing of the denial of a
12 constitutional right.

13 The request for a certificate of appealability is DENIED.

14 IT IS SO ORDERED.

15 Dated: September 15, 2010

16 /s/Edward J. Garcia

17 EDWARD J. GARCIA, JUDGE
18 UNITED STATES DISTRICT COURT
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